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Senate

The Senate met at 10 a.m. and was called to order by the Honorable CHRISTOPHER A. COONS, a Senator from the State of Delaware.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Eternal God, the source of our joy, thank You for this opportunity to call on Your Name. You have sustained this Nation through the seasons of its existence, and we are depending on You, Lord, to guard our future with Your might.

As our Senators seek to do the work of freedom, deepen their love for those on life's margins. Give our lawmakers this day the gift of Your spirit as they give thanks to You in all things.

Lord, we believe You will lead us through all our tomorrows as You have led us through our yesterdays.

We pray in Your merciful Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable CHRISTOPHER A. COONS led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. INOUE).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, November 27, 2012.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable CHRISTOPHER A.

COONS, a Senator from the State of Delaware, to perform the duties of the Chair.

DANIEL K. INOUE,
President pro tempore.

Mr. COONS thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2012—MOTION TO PROCEED—Resumed

Mr. REID. Mr. President, I now move to proceed to Calendar No. 419, S. 3254, the Defense authorization bill.

The ACTING PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

Motion to proceed to the bill (S. 3254) to authorize appropriations for fiscal year 2013 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

SCHEDULE

Mr. REID. Mr. President, we are going to recess, as we normally do on Tuesdays, from 12:30 to 2:15 to allow for our weekly caucus meetings.

We are going to begin consideration of the disabilities treaty this afternoon whether with a vote or with permission. It is a simple majority vote to move to this most important piece of legislation.

MEASURE PLACED ON THE CALENDAR—S. 3637

Mr. REID. Mr. President, I am told that S. 3637 is due for its second reading and is at the desk.

The ACTING PRESIDENT pro tempore. The clerk will read the bill by title for the second time.

The legislative clerk read as follows:

A bill (S. 3637) to temporarily extend the transaction account guarantee program, and for other purposes.

Mr. REID. Mr. President, I would object to any further proceedings with respect to this bill at this time.

The ACTING PRESIDENT pro tempore. Objection is heard. The bill will be placed on the calendar.

Mr. REID. Mr. President, this is one of the must-do pieces of legislation we have to do before this calendar year ends.

FINDING COMMON GROUND

Mr. REID. Mr. President, too often it is a challenge to find common ground here in Washington. But as we negotiate a path back from the fiscal cliff, we should also recognize when Democrats and Republicans agree. We agree taxes should not go up for anyone making less than \$250,000 a year. Now, 97 percent of small businesses and 98 percent of middle-class families would benefit from that.

With common ground in sight, we should be able to act today to avert the fiscal cliff for millions of families and businesses. Even if we disagree on whether to extend tax breaks for the wealthiest 2 percent of Americans, we should agree to hold the middle class harmless and do it today, do it now. A single vote in the House of Representatives would get the job done now. Unfortunately, there is one obstacle standing between Congress and compromise: Grover Norquist. For years Norquist has bullied lawmakers willing to put their oath of office or their promise to serve constituents ahead of their pledge to this antitax zealot. His brand of ideological extremism has been bad for Congress and even worse for the country. So I was pleased to see Republicans in Congress distance themselves from Norquist this week. I appreciate that very much. So do the American people. I am sure their constituents do. Several Republican lawmakers have said revenue should be on

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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the table during the fiscal cliff negotiations. How common sense is that? Absolutely. It is so clear to everyone except Grover Norquist. It is time now for the Republicans to turn this happy talk into action.

President Obama and Senate Democrats ran on a promise to end the Bush tax breaks for the wealthy. President Obama did not hide that in the last year of his campaign. Every place he went, that is what he talked about. Americans, when they voted, raised their voices and supported our pledge. Congress must act in accordance with the will of the American people.

An agreement to avoid the fiscal cliff must give economic certainty to middle-class families and must protect important tax deductions for families and businesses still struggling to recover from this great recession. It must take a balanced approach to reduce spending. But it must also ask the richest of the rich to pay a little bit extra to reduce the huge deficit we have.

Any balanced agreement will require difficult concessions from both sides—I said both sides. Clinging to the kind of ideological purity Grover Norquist peddles, saying he will never bend or compromise, is easy. Cooperating with those with whom you disagree is hard. Doing what is right for the country despite personal cost is hard. Legislating is hard. As we approach the fiscal cliff, Democrats are ready to make those tough choices. I hope my Republican friends, especially those who claim they put no pledge before their pledge to serve their constituents, can say the same.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The minority leader is recognized.

FISCAL CLIFF

Mr. MCCONNELL. Mr. President, yesterday I came to the floor to discuss what is known as the fiscal cliff, a mix of automatic tax hikes and defense cuts that are set to hit at the end of the year, jeopardizing our security as well as our economy. My message was pretty simple: A solution is possible.

Republicans have been reasonable, and the President needs to lead. He is the only one who can get us to a solution. If that is what he wants, we will succeed. So it was with some concern that I read this morning that the President plans to hit the road next week to drum up support for his own personal approach to the short- and long-term fiscal challenges we face. In other words, rather than sitting down with lawmakers of both parties and working out an agreement, he is back on the campaign trail, presumably with the same old talking points with which we are all quite familiar.

Look, we already know the President is a very good campaigner. We congratulate him on his reelection. What we do not know is whether he has the leadership qualities necessary to lead his party to a bipartisan agreement on big issues such as we currently face. So

let me suggest that if the President wants a solution to the challenges of the moment, the people he needs to be talking to are the members of his own party so he can convince them of the need to act. We are not going to solve this problem by creating villains and drumming up outrage. We will solve the problem by doing the hard work of sitting down and figuring out a solution that involves tough choices on all sides.

That gets at another point I made yesterday. In the past, Democrats have demanded tax hikes now for spending cuts that never actually happen. Not this time. A balanced approach means real spending reductions now. And I am not saying this because it is the Republicans' position, although it is. I am not saying this because I have anything against the government, which I do not. I am saying this because it is the only approach that has any chance of working. No credible deficit reduction plan we have seen over the past few years excludes real cuts. If we want to prevent this crisis, Democrats need to be as serious about cutting spending as they are about spending. It is that simple.

By the way, this is an approach Americans overwhelmingly support. According to a recent AP poll, voters prefer spending cuts to tax hikes 62 percent to 29 percent—a more than 2-to-1 margin. Now, there is a reason for this. The American people are not stupid. They know the problem with Washington is not that it taxes too little but that it spends too much. They also know the only reason we are even talking about a looming fiscal crisis right now is because the Democrats have spent the last 4 years creating it.

That is what I would like to focus on this morning—how we got into this mess in the first place—because amidst all of the talk about plans and proposals, it is easy to forget that we did not get here by accident; we got here because Washington Democrats, from the President on down, have done two things exceedingly well over the past 4 years: spent other people's money and kicked the can down the road—spend other people's money and kick the can down the road. For 4 years, Democrats spent money we did not have in the misguided hope that it would help the economy. They have borrowed trillions of dollars to keep unemployment pretty much right where it was when they started. And here is what we have 4 years later: a mountain of debt and a looming national budgetary crisis.

Republicans are happy to talk about how to solve this mess, but make no mistake, we will also talk about how we got here. The reason we are having these negotiations is because Washington Democrats have spent money without any care for the cost or the future and refuse to do anything to protect long-term spending programs, such as Medicare, a failure that is among the biggest single drivers of our debt.

All this reflects a very clear philosophy: For Washington Democrats, every dollar that has ever been secured for anything is sacred—every dollar that has ever been secured for anything is sacred—and they will defend it to the death regardless of what it means for jobs or the economy. But those days are over because you do not eliminate trillion-dollar deficits by taxing the rich—not even close. It may be an effective talking point, but as a matter of policy it is a minor deal, and the Democrats know it. So, as we move into the final stretch, it is time, as I have said, to put the talking points away and get serious about striking a deal.

The first step to recovery is to admit you have a problem. If borrowing more than 40 cents for every dollar you spend does not convince you you have a spending problem, frankly, I do not know what will. If Democrats cannot admit we have a spending problem, they need to talk to their constituents more. They need to get real. That means changing the way things have been done around here for the past few years.

Independent budget experts have been telling us for ages that our long-term budget deficits are driven by the unsustainable health care entitlements. What was the administration's response to that? Their response was to add trillions more by creating an entirely new health care entitlement program. We were promised that the President's health care law would reduce health care costs. What did it do? We are now told health care costs will rise as a share of our economy and the taxpayer's liability. By one estimate, those costs will go up by more than $\frac{1}{2}$ trillion over the next 10 years.

We know the number of Americans 65 or older will increase by one-third over the next 10 years. According to the Census Bureau, there were 40 million older Americans in 2010. There will be 54 million of them a decade after that, and more than 72 million older Americans a decade after that. What are the Democrats doing to ensure the programs they rely upon will actually be there? We cannot ignore the facts. We need to prepare for the demographic changes we know are coming. Medicare is simply too important for millions of seniors to let it continue down the road to insolvency. We must preserve it for today's seniors and strengthen it for those who will retire in the years ahead.

As Congress looks for savings, we need to look at the new health care entitlements too. While Democrats and Republicans may disagree on ObamaCare, it is ridiculous to suggest that we make changes to Medicare and Medicaid while leaving \$1.6 trillion in new ObamaCare spending untouched.

For 4 years Democrats have been completely unbalanced in the way they have spent paper dollars. Yet now that the crisis is upon us, they solemnly advise us that we need to be balanced in

our solution. This is how you ensure the expansion of government. This is how you end up with \$16 trillion of debt, but it is not how you get out of it. It is not how you solve the problem. You solve the problem by taking tough medicine and tough votes. You solve it by doing something different than what you have been doing all along. You solve it with the help of a President who is willing to lead his party. You don't just change your rhetoric and your talking points while telling your base behind closed doors you aren't going to give any ground. You change your behavior. For Democrats in Washington, as I have said, that means getting serious for a change about cuts. The time for campaigning is over. It is time to act.

NUCLEAR OPTION

Mr. President, yesterday the majority leader and I had a rather spirited discussion about his intention to change the Senate rules outside the process provided in those rules.

When he was in the minority, my friend from Nevada objected strenuously to the very procedure he now wants to employ. He called using a simple majority maneuver to change Senate procedure the "nuclear option" and described it as breaking the rules to change the rules. Now that he is in the majority, he says the ends justify the means. He says we have to make the Senate more efficient and we have to violate the Senate rules to do that so he and his colleagues in the majority can implement more easily their vision for America. According to him, these minor changes won't affect anyone who has the thought of making America better.

Let me say that again. The majority leader said these minor changes won't affect anyone who has the thought of making America better. Of course, in the majority leader's world, it will be just he and his colleagues who determine what makes America better.

In short, according to my friend from Nevada, the means by which he wants to achieve his ends don't matter, only his ends matter. That is pretty convenient if you happen to be in the majority at the moment. I say again, at the moment. But convenience or efficiency, as my friend has described it, is not what the Senate has been about.

My friend the majority leader may have put it best in 2006 when he made the first of his commitments to respect the rights of the minority. This is what the majority leader said:

As majority leader, I intend to run the Senate with respect for the rules and for the minority rights the rules protect. The Senate was not established to be efficient. Sometimes the rules get in the way of efficiency. The Senate was established to make sure that minorities are protected. Majorities can always protect themselves, but minorities cannot. That is what the Senate is all about.

My friend from Nevada then committed that he was going to "treat my Republican colleagues the way I expect

to be treated" and that he would do everything he could to "preserve the rules and traditions of the institution that I love."

Inaccurately describing the essence and wise purpose of the Senate, the majority leader sounded a lot like our former colleague Robert C. Byrd. So I was quite surprised to hear our friend from Nevada assert that Senator Byrd would actually support the heavy-handed tactic he intends to employ.

I am not going to correct all the inaccuracies my friend made yesterday, such as saying four times that it takes 10 days to get out a bill. I don't know what version of Riddick's my friend has been reading, but if it actually took 10 days to get on a bill I might actually support some rule changes myself.

But I must disabuse my friend from Nevada about how Senator Byrd would view the heavy-handed tactic he intends to employ. Unlike the majority leader, I recall when our late colleague spoke on this topic at a Rules Committee hearing the last time the majority leader entertained "breaking the rules to change the rules." Senator Byrd was unequivocally against violating Senate rules to change the rules the way the current majority leader is proposing.

Senator Byrd began by noting that "Our Founding Fathers intended the Senate to be a continuing body that allows for open and unlimited debate and the protection of minority rights. Senators have understood that," he stated, "since the Senate first convened." That is Senator Byrd on the history of the Senate.

Senator Byrd also noted that at the Constitutional Convention, James Madison reported that the Senate was to be "a necessary fence" in order to "protect the people against their rulers," and "to protect the people against the transient impressions into which they themselves might be led."

How did Senator Byrd view the filibuster in the role of the Senate? How did it relate to the Senate as a "necessary fence"? Senator Byrd said, "The right to filibuster anchors this necessary fence."

Senator Byrd acknowledged that this right should not be abused, and that "there are many suggestions as to what we should do" if it is abused. He recounted procedures that currently exist under the rules—I say again, procedures that currently exist under the rules—to address it if it is.

As I suggested yesterday, Senator Byrd also indicated that simply working a full week such as most people do—I mean, most people in America have a 5-day work week—by simply working a full week we could address some of these concerns. Senator Byrd bemoaned the fact that "the Senate often works 3-day weeks." In other words, if you want the Senate to be more productive, start working more. It is not rocket science here. That is what Senator Byrd was saying.

But Senator Byrd was clear about what we should never do. He said, "We must never, ever tear down the only wall—the necessary fence—this Nation has against the excesses of the executive branch and the result of haste and tyranny of the majority."

Senator Byrd, as we know, was a historian. He was a skillful majority leader who understood the unique importance of the Senate and the need of a majority leader to keep his commitment. But he was also a political realist who had been around enough to understand that political majorities are fleeting, and if you break the rules to suit your political purposes of the moment, you may regret having done so when you find yourself in the minority. Senator Byrd specifically said:

I strongly caution my colleagues as some propose to alter the rules to severely limit the ability of a minority to conduct a filibuster. I know what it is to be majority leader, and wake up on a Wednesday morning in November and find yourself a minority leader.

To make sure there was no doubt as to his views on the subject, Senator Byrd concluded by unequivocally objecting to the use of the nuclear option that the Senator from Nevada is now proposing. He said:

The Rules Committee must, however, jealously guard against efforts to change or reinterpret the Senate rules by a simple majority, circumventing rule XXII where a two-thirds majority is required.

My friend the majority leader is no more correct about Senator Byrd's views on the nuclear option, on the idea of breaking the rules to change the rules, than he is about taking 10 days to get on a bill.

I will conclude by reading what are likely the last words Senator Byrd spoke on the subject of the nuclear option, and I encourage my colleagues to reflect on his wise counsel. This is what he said:

As I have said before, the Senate has been the last fortress of minority rights and freedom of speech in the Republic for more than two centuries. I pray that Senators will pause and reflect before ignoring that history and tradition in favor of the political party of the moment.

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

RULES CHANGES

Mr. REID. To paraphrase Shakespeare, which I don't do too often, I think the Republican leader protests far too much. Now he has gone back to quoting Senator Byrd.

The situation we had when the Republicans were trying to change the rules regarding judges was totally different than what has happened on the floor the last few years. You see, what Democrats were proposing to do, help repair the Senate, is pretty much what Senator MCCONNELL said was necessary in 2005.

For example, Senator MCCONNELL has said that the Senate has repeatedly adjusted its rules as circumstances dictate. Let me quote. In remarks on the

Senate floor in May of 2005, Senator MCCONNELL said:

Despite the incredulous protestations of our Democratic colleagues, the Senate has repeatedly adjusted its rules as circumstances dictate. The first Senate adopted its rules by majority vote, rules, I might add, which specifically provided a means to end debate instantly by simple majority vote. That was the first Senate way back at the beginning of our country. That was Senate Rule 8, the ability to move the previous question and end debate.

Let me repeat some of the things he said:

Despite the incredulous protestations of our Democratic colleagues, the Senate has repeatedly adjusted its rules as circumstances dictate.

The same day, Senator MCCONNELL also reported that the Senate has “often reformed Senate procedure by a simple majority vote.”

When Republicans were in the majority, Senator MCCONNELL said this:

This is not the first time a minority of senators has upset a Senate tradition or practice, and the current Senate majority intends to do what the majority in the Senate has often done—use its constitutional authority under article I, section 5, to reform Senate procedure by a simple majority vote.

On March 27, 2005, Senator MCCONNELL told Fox News that the Senate can change the rules with 51 votes. McConnell said:

Well, obviously you would need 51 votes to do it. I'm confident that we would have 51 votes if the majority leader decides to do it. I believe it should be done if we cannot get accommodations from the Democrats.

So what has changed in the last few years since those statements were made? Well, for one thing under Leader MCCONNELL Republican Senators have mounted filibusters so much more on a regular basis.

We talked here yesterday about the motions to proceed. I had a meeting this morning with one Senator who has been in the Senate for 30 years. He said, Why are you only changing the rules this much?

Look how simple the rule changes are that we are making, motions to proceed. Let us talk about that. I have a piece of legislation on the floor, as we have on a number of occasions. That has to sit for a couple of days. Once that happens and they won't let us on the bill, they won't let us on anything, I have to file cloture. Let us say I may do that on a Wednesday after a bill lays there for a couple of days, so we can have a Friday cloture vote.

But, Mr. President, having been here not very long, you know that is not the end of it. We have got cloture when we really haven't because there is 30 hours of idle time to do zero, nothing. Then after the 30 hours, you are on the bill, and to get off the bill you have to go through the same process again.

I talked to three Republican Senators yesterday and they said, Explain that to me. I said, Well, for the approximately 9 or 10 days that we waste on getting on a bill, we could, if you guys let us on a bill, we could be offer-

ing amendments for 4 or 5 days instead of waiting for 30 hours to expire and all of that.

Also, we have this crazy idea that if you are going to have a filibuster, you have to stand and say something, not hide in your office someplace or go to a wedding that you are having in your State. Then we also are doing the incredulous thing of saying if we want to go to conference on a bill, rather than having three filibusters necessary to overcome with cloture, we would do it once.

Those are the simple changes we are making, and Senator MCCONNELL was right when he said that despite the incredulous protestations of our Democratic colleagues, the Senate has repeatedly adjusted its rules as circumstances dictated. We are making simple changes. We are not changing the Constitution, we are not getting rid of the filibuster. We are making three simple rules changes. As my friend the Democratic Senator from New Mexico, who is retiring, my friend who has been here 30 years, said Why is that all you are doing?

Under Leader MCCONNELL, Republicans have mounted filibusters on things that don't matter. The motion to proceed, he said, well, that allows us to get—I am paraphrasing—that allows us to get set and have an idea what will happen on the bill itself.

That is nonsense. It is only as the leader indicated at the beginning of this Congress, his No. 1 goal is to defeat President Obama. We have been able to get nothing done because of that. The American people are sick of it.

In the 109th Congress, from 2005 to 2006, when the Republicans were in the majority, there were very few filibusters. In the next Congress, when the roles were reversed, Republicans, they have done—I give this example, which is so understandable to everybody. Lyndon Johnson, majority leader for 6 years—I will have 6 years at the end of this year—had one cloture motion. Me? I think we are up to about 386 now. In this Congress we have had 110 filibusters and we have weeks to go. It is even in the New York Times. They say: Oh, he has filled the legislative tree. The New York Times reported I did that 19 times—out of 110 filibusters. Had they let us get on a bill, there wouldn't be any need to fill the tree. We could have spent that time having amendments.

Republicans have increased the number of filibusters so out of proportion to any changes that have been in the Senate it is hard to comprehend. The Senate is not working as it should. Everyone in America—and that is kind of an exaggeration, I acknowledge that—maybe not everyone, but as I travel around the country trying to help my candidates get elected and raise money, people say: What are you going to do to change the filibuster? This is awful. What is going on?

That is what they say. They expect Washington, the Senate, to work like

“Mr. Smith Goes to Washington,” not idle time with quorum calls and waiting for 30 hours to expire on meaningless 30-hour postcloture time. We are not getting rid of that with regular filibusters, but we are getting rid of it on a motion to proceed.

The Senate isn't working. Apart from Senator MCCONNELL and his troops, basically everybody in America agrees the Senate is not working.

In the Senate, as in any human institution, there will always be plenty of blame to go around, but let's call it like it is. Two long-time Senate watchers, Thomas Mann and Norm Ornstein—one representing a progressive think tank, the other a conservative think tank—wrote this:

We have been studying Washington politics and Congress for more than 40 years, and never have we seen them this dysfunctional. In our past writings, we have criticized both parties when we believed it was warranted. Today, however, we have no choice but to acknowledge that the core of the problem lies with the Republican Party.

I didn't make that up. They wrote it; two of the foremost Congress watchers this country has ever had. That is what they wrote. Objective outside observers are calling it like it is. The current Republican minority is abusing the Senate rules. So, in response, to quote Senator MCCONNELL:

The current Senate majority intends to do what the majority in the Senate has often done—use its constitutional authority under article I, Section 5, to reform Senate procedure.

We plan to do so to help repair the Senate. I am sorry there are those who are criticizing me that we are not doing more, but we are doing this. We get rid of the motion to proceed and have people come and present their faces—as Senator DURBIN said in a more explicit way, put their rear ends here in the Senate—rather than someplace outside Capitol Hill.

This is the right thing to do. We need to repair the Senate. It is not working, and at the start of the next Congress we intend to do our utmost to take some modest steps to make it work better.

The ACTING PRESIDENT pro tempore. The Republican leader.

Mr. MCCONNELL. Mr. President, I certainly agree the Senate isn't working. We get a few days in between recesses, rarely work at night, and almost never do anything on Thursday. That is entirely within the purview of the majority leader.

It is true that a few years back, when my party was in the majority, we contemplated changing the rules, but cooler heads prevailed and we didn't. The fundamental issue, as my friend lays out, is that he wants to break the rules to change the rules. In other words, he and I are not negotiating on these issues. He is deciding what will be the rule in the Senate. He will break the rules in order to change the rules. That is all anybody listening to this debate needs to understand. What the majority leader is going to do is he is going

to break the rules to change the rules—one party only.

We ought to be negotiating rule changes. Rule changes ought to be proposed by the majority leader and the minority leader together that would surpass the 67-vote threshold, if it is designed to protect the Senate from the whims of new majorities. There is always a temptation when a party is in the majority to want to change the rules to benefit themselves at the expense of others. It is particularly absurd to do it right now because anything Senate Democrats would gain out of that would go nowhere in the House. So there is no practical purpose served by this. All it does is put on record that Senate Democrats are willing to break the rules to change the rules. That is the fundamental issue. Rules changes ought to be negotiated by the two leaders, as they have been down through the years, and then proposed together.

As I have indicated on several occasions—and I will say again—I think the frustrations the majority leader has had could have been easily solved by putting some of his young Members in the Chair and breaking down some—one person—trying to make it difficult to get on to a bill. All this could have been fixed. Rather than complaining about it, just do something about it. That is what I would have done, if I had been in his shoes. He has chosen not to do that.

Rather than point fingers and continue to campaign—look, the campaign is over. You guys had a pretty good day. You are in the majority. But you can't seem to turn the campaign off. You just keep running it forever. So here we are with this explosive nuclear option being thrown into the Chamber at a time when we ought to be turning the election off and trying to come together to solve the biggest problem, which I talked about first, which is the fiscal cliff and the Nation's seemingly hopeless debt and deficit situation. That is what we ought to be doing. Instead, my friends on the other side just can't keep from continuing to celebrate the election. You won. Now, why don't we govern. The way to govern is to try to bring this body together.

The Senate has been built over the years on collegiality. We have always had some personalities on both sides who made it a challenge for whoever the majority leader was. I can remember back when we were in the majority and Howard Metzenbaum from Ohio would sit out here on the floor and read every bill. He was a royal pain in the you know what to whoever the majority leader was at the time. The Senate survived all that. We didn't engage in a rules change dictated by whoever was in the majority at the moment.

This is exactly the wrong way to start off on a new year and to end an old year with a ton of problems that we have to deal with. Here we are, as a result of this suggestion that we employ the nuclear option, arguing about ar-

cane rules changes when we ought to be sitting down together and trying to solve the Nation's huge deficit and debt problems.

But the fundamental issue is this: Is the majority going to break the rules to change the rules? That is the issue before the Senate. Are we going to break the rules to change the rules—employ the nuclear option, fundamentally change the body, not have a negotiation between the two leaders about what adjustments might be appropriate to make the Senate work better. Oh, no, we are going to do it on our own.

I think it is a huge mistake not only for the Senate, but it will impact obviously our short-term ability to come together and to work on the big problems the country sent us to solve.

The ACTING PRESIDENT pro tempore. The majority leader.

Mr. REID. Mr. President, the Republican leader is entitled to his own opinion but not his own facts, and we seem to have a revision of facts that simply are not accurate. I served with Senator Metzenbaum. He understood the rules. We always worked through them. There was not a big deal with that. He slowed things down a little bit, but that is what Senators do.

Also, remember who said that a simple majority would do it? MITCH MCCONNELL. I am not breaking the rules to change the rules. Here again is what Senator MCCONNELL said:

The first Senate adopted its rules by majority vote, rules, I might add, which specifically provided a means to end debate instantly by simple majority vote. That was the first Senate way back at the beginning of our country.

That is true. I would also say—

Mr. MCCONNELL. Would the majority leader yield on that point?

Mr. REID. Sure.

Mr. MCCONNELL. Did the Senate majority at that time, made up of Republicans, choose to go forward and do that? We did not do it. We did not use the nuclear option. There was a lot of discussion about it which related to judicial appointments, but in the end the majority chose not to do it.

Mr. REID. I respond to my friend, the point is that rules have been changed by simple majority for a long time. That is what Senator MCCONNELL said in 2005 and that is accurate.

I would also say this, and I say this as respectfully as I can about the deceased Senator Byrd. I think people will recall, those who served in the Senate when Senator Byrd was around, that I was referred to as his pet. OK. He took very good care of me. We had a relationship that was very unique. I cared a great deal about this man. But don't misquote him.

Leader Byrd made clear he was willing to force a majority vote if he needed to. Here is what Senator Robert Byrd said:

The time has come to change the rules. I want to change them in an orderly fashion. I want a time agreement. But barring that, if I have to be forced into a corner to try for a

majority vote, I will do it because I am going to do my duty as I see my duty, whether I win or lose.

I can see that man with his white hair, standing straight and tall, saying that. That is a direct quote from Robert Byrd. I am in the same position he was. The Republicans have made the Senate dysfunctional, and I have asked my caucus to support me for some simple changes—simple changes. I went over them. The vexatious motion to proceed that was never abused until this Congress by these Republicans we are going to change, and that is the way it should be.

Talk about all the time we are wasting not talking about the fiscal cliff is poppycock. The Republican leader is the one who is coming to the floor engaging in these conversations, not me. There are going to be no rules changes until the next Congress. This isn't taking away from the fiscal cliff arguments at all that either side might have.

I would also say this. Before coming here, I was a trial lawyer, and I am proud of the fact that I was. I tried lots of cases. I had many jury trials—over 100. But I also settled hundreds and hundreds of cases. One never felt comfortable going to trial because what we always wanted to do was to settle the case before that. Even in the cases we were forced to go to trial, with rare exception, the other side—either plaintiff or defendant, whichever side you weren't on—would come to say, why don't we try to work something out, and here is my idea.

But here we have a unique deal. I have a Republican leader saying why doesn't he negotiate with us. Our proposal is there, which is to simply change the motion to proceed, have a talking filibuster, and do something about the way we go to conference. If the Republican leader doesn't like that and has some other suggestion about how rules should be changed, I will be happy to talk to him. If he thinks things are hunky-dory right now, he is in a distinct minority, as are the Republicans in the Senate.

Mr. MCCONNELL. We keep quoting Senator Byrd back and forth, but I think it is appropriate to look at what he said in 2010. He said:

I believe that efforts to change or reinterpret the rules in order to facilitate expeditious action by a simple majority are grossly misguided. The Senate is the only place in government where the rights of the numerical minority are so protected.

I said in my prepared statement earlier what Senator Byrd said before the Rules Committee:

The [Rules] Committee must, however, jealously guard against efforts to change or reinterpret the Senate rules by a simple majority, circumventing rule XXII where a two-thirds majority is required.

I keep coming back to this because it has to do with the way any rule change is implemented. That is the point. The majority leader has suggested, and I think it is appropriate, that we talk

about rule changes together. But that is not what he is suggesting he is going to do. He says he is going to break the rules to change the rules and employ the nuclear option.

That is not a negotiation with the minority over rules changes. What we ought to be doing is talking to each other about what adjustments in the rules we could advocate together, and not one party with a majority today—that might be in the minority 2 years from now—breaking the rules to change the rules for some kind of misguided short-term advantage. That is the problem.

So I would be happy to talk to the majority leader about these issues, but I vigorously oppose—and I know Senator Byrd would vigorously oppose—breaking the rules to change the rules. He was very clear about that in 2010. I know he would object to it.

I hope somehow this nuclear option can be avoided. It seems to me to be an absolutely unnecessary distraction away from much larger issues confronting the future of our Nation.

Mr. REID. Mr. President, Senator Byrd served in the House of Representatives and the Senate for almost 60 years. He gave lots of speeches. I have quoted what he said. I will quote again part of what he said.

The Constitution in Article I, Section 5 says that, Each House may determine the Rules of its Proceedings.

Now we are at the beginning of the Congress. This Congress is not obliged to be bound by the dead hand of the past.

So this debate is not going to be solved by the deceased. It is going to be solved by us. We are in the Senate today and the Senate has not been working. No matter how many times the Republican leader says he likes how things are today, it doesn't make it so that the majority of the Senate likes how it is today. The facts are the facts. We can't make them up. The Senate is not working, and we need to do something to fix it.

I close, then, as I began. I would be happy to work with Leader MCCONNELL about rules changes. I have made clear what we seek. I await his suggestions. As I repeat again what I said earlier, a man who has served with distinction in the Senate, JEFF BINGAMAN—quite a legal scholar, having been attorney general before he came here—asked: Why are we asking for such modest changes? So if the Republican leader has some ideas as to what he thinks should be done, I will come to his office. We can do it privately or publicly. I am happy to work with him. As I indicated, that is how I used to do things when I tried cases. This is the same, just that we have a bigger jury.

Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KYL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

ORDER OF PROCEDURE

The ACTING PRESIDENT pro tempore. Under the previous order, the following hour is equally divided and controlled between the two leaders or their designees, with the Republicans controlling the first half.

The Senator from Arizona is recognized.

RULES CHANGES

Mr. KYL. Mr. President, I would like to continue the conversation that our two leaders were engaged in earlier and also on yesterday. This is going to be a very important issue for the Senate.

To put it into perspective for the American people, let me just say that a rules change in the Senate is not a small or an inconsequential matter. It is even more important if it is attempted to be done without going through the normal process of changing the rules, which requires a two-thirds majority. This is important because the Senate has always considered itself a continuing body. It does not end and then begin again as the House of Representatives does because the House has an election every 2 years. In this body, Members are elected for 6-year terms. As a result, every 2 years we have some turnover in the body, but two-thirds of the body has already been here and continues forward.

So the rules of the Senate have always been continuing rules of the continuing body, amendable by a two-thirds majority of the body. To suggest a nuclear option by which a mere majority of the body can amend the rules is itself a violation of the rules. It is an assertion of power. But as the old saying goes: Might does not make right. And the fact that the majority may have the power to overrule a ruling of the Chair, thus establishing a new precedent and a new rule of the Senate, does not make it right. That is why it hasn't been done.

In point of fact, there was a time a few years ago, as has been discussed, when some members of the Senate Republican majority were considering the use of the same parliamentary tactic to ensure a vote on nominees for the U.S. Supreme Court and also for the Court of Appeals. The feeling was that the Democratic minority had filibustered over and over and over and had prevented votes, I think, on Miguel Estrada, who was being nominated for the DC Circuit Court of Appeals. I think he was filibustered seven separate times.

The Republican leadership was investigating the possibility of ensuring

that we could get a vote. The only way that seemed possible was to assert this power of overruling the Parliamentary's ruling through the Chair and thus establishing by 51 votes—or a mere majority—a new rule of the Senate.

That was deemed to be such a change that it was called the nuclear option because it hadn't been done, and we could say that it was comparable to the use of a nuclear weapon in a war. It was such a game-changing proposition, to say the least, that Members on both sides of the aisle got together in what they called the Gang of 14. I think almost everyone in this body is glad that cooler heads prevailed; that those 14 Members decided they would reach an agreement amongst themselves that would make it impossible for either the Democratic Party to automatically filibuster nominees or for the Republican Party to have this right to change the rules just because they had 51 votes. Therefore, they reached the compromise which, for judicial nominees, was that there would be no filibuster except in extraordinary circumstances.

Both sides deemed that a sufficient way of resolving the issue that came before us at that time. Everybody stood down. The war did not occur. The nuclear weapon was not used, and that was for the best of the country and certainly for the best of the Senate. We avoided a crisis and, certainly, there would have been a crisis. I can't imagine that my friends on the Democratic side of the aisle would not have reacted very badly to the use of that nuclear option had it been done by the Republican majority.

Well, today the shoe is on the other foot. The Democratic majority now has reason to believe that it would like to move forward with more alacrity on legislation. Therefore, it believes that by this same nuclear option procedure it should change the rules so that the ability to filibuster at the beginning of the consideration of the bill is eliminated.

The Republican minority naturally has said: Wait a minute. That is wrong for two reasons. First of all, just as you accused us of doing, you are changing the rules without going through the rules process change. This is your own version of the nuclear option. If it was wrong then, it is still wrong now. And most of us agreed after the fact that it was wrong then. But, secondly, what you would do, if you eliminate the requirement for cloture and a cloture vote if there is an objection to a unanimous consent request to take up the bill or motion to proceed to a bill, what you are doing is putting all of the power into the hands of the majority leader—in this case, the Democratic leader—to decide whether there will be any amendments at all from the Republican side or even from the Democratic side. The only leverage that the minority has to ensure that it will be able to offer amendments is to negotiate with the majority leader and ensure that right exists. And the only leverage it has is to deny cloture on the